

Seven-Up/Royal Crown Bottling Companies of Southern California, Inc. and Amalgamated Industrial Workers Union, Petitioner and United Industrial, Service, Transportation, Professional and Government Workers of North America, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO. Case 21-RC-19744

April 29, 1997

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The National Labor Relations Board has considered objections to an election held February 13, 1997, and the Regional Director's report, pertinent portions of which are attached as an appendix, recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 309 for the Petitioner, 116 for the Intervenor, and 7 against participating labor organizations, with 1 challenged ballot, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief,¹ has adopted the Regional Director's findings and recommendations,² and finds that a certification of representative should be issued.

The Intervenor's Objection 1 asserts that the Board did not notify the Intervenor of the filing of the election petition before the scheduled date of the hearing, that the Intervenor received "formal notice" of the petition on January 17, 1997, and that despite the asserted lack of proper service the Region refused to give the Intervenor an adequate period to campaign. In adopting the Regional Director's recommendation to overrule this objection, we additionally rely on the following undisputed facts.

¹ On April 9, 1997, the Intervenor filed with the Board a supplemental information to its exceptions that purports to show that the Petitioner misrepresented its affiliation with another labor organization in an organizing campaign at another employer. There is no contention that any eligible voter in this case was aware of these alleged misrepresentations. The Intervenor asserts that this information is newly discovered and was not available at the time it filed its exceptions. Even assuming that the Intervenor's allegations are accurate, for the reasons set forth in the Regional Director's report on objections, they do not establish that any objectionable conduct took place in connection with this election.

² In the absence of exceptions, we adopt pro forma the Regional Director's recommendation to overrule the Intervenor's Objection 3.

In adopting the Regional Director's recommendation that the Intervenor's Objection 2 be overruled, we additionally rely on *Bogner of America*, 236 NLRB 822, 823 (1978). See also *John W. Galbreath & Co.*, 288 NLRB 876, 877 (1988) (misrepresentation about legal effect of union-security clause not objectionable).

The petition in this case was filed January 6, 1997. On January 16, 1997, the Petitioner and the Intervenor executed the Stipulated Election Agreement, which was approved by the Regional Director on January 17. The Stipulated Election Agreement provided, inter alia, that the election would be held on February 13, 1997. Under these circumstances, it is evident that the Intervenor has actual notice of the petition prior to January 17, 1997, the date on which it claims in its objections to have first received "formal notice" of the petition. Moreover, the Intervenor having stipulated and agreed to hold the election on February 13, its assertion that it was not afforded an adequate period in which to campaign, or that any defect in the service of the petition constituted grounds for setting aside the election, is wholly without merit.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Amalgamated Industrial Workers Union, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All assigned route salespersons, mechanics, body and fender repair employees, garage mechanics A, garage mechanics B, garage mechanic's helpers, maintenance mechanics, maintenance mechanic's helpers, dispenser mechanics A, dispenser mechanics B, dispenser mechanics C, dispenser/vending utility, part-time weekend/holiday stockpersons, drivers, semi drivers, semi driver doubles, bulk pre-sales delivery employees, pre-sales delivery employees, utility drivers, fountain vending delivery drivers, merchandisers, special event crews, display/stockers, plant and service employees, fleet painters, shipping and receiving clerks, machine operators, advertising material attendants, painters, bottlers, syrup employees, carpenters, janitors, lift truck operators, warehouse crew, plant crew, stockroom attendants, garage attendants, garage utility employees, seasonal help, full and part-time delivery drivers, seasonal help full and part-time delivery drivers, and lead persons employed by the Employer at its facilities located at 3220 East 26th Street, Vernon, California, 1950 Williams Street, Oxnard, California, 7225 Orange-thorpe Avenue, Buena Park, California, 1300 West Taft, Orange, California, and 1166 Arroyo Avenue, San Fernando, California; excluding all other employees, technical employees, quality control technicians, temporary employees, office clerical employees, professional employees, salespersons except covered route salespersons, guards and supervisors as defined in the Act.

APPENDIX

REPORT ON OBJECTIONS

Pursuant to a Stipulated Election Agreement approved on January 17, 1997, an election by secret ballot was conducted on February 13, 1997, among the employees of the Employer, in the unit found appropriate for the purposes of collective bargaining.¹ The tally of ballots, which was served on the parties immediately following the election, showed the following results:

Approximate number of eligible voters	623
Number of Void ballots	1
Number of Votes cast for PETITIONER	309
Number of Votes cast for INTERVENOR	116
Number of Votes cast against participating labor organization(s)	7
Number of Valid votes counted	432
Number of Challenged ballots	1
Number of Valid votes counted plus challenged ballots	433

On February 20, 1997, the Intervenor timely filed objections to the election, a copy of which was thereafter served on the Petitioner and the Employer by the Regional Director. Pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, I, after reasonable notice to the parties to present relevant evidence, have completed an investigation of the objections and issue my report thereon. (The Intervenor's objections, Attachment A, are omitted from publication.)

The Intervenor's objections were unnumbered. For the purposes of discussion, each objection will be numbered and discussed below.

The Objections

Objection 1

The Board did not notify the UIW of the filing of the Petition in this matter before the scheduled date of the hearing. Formal notice was received on Friday, Jan-

¹ All assigned route salespersons, mechanics, body and fender repair employees, garage mechanics A, garage mechanics B, garage mechanic's helpers, maintenance mechanics, maintenance mechanic's helpers, dispenser mechanics A, dispenser mechanics B, dispenser mechanics C, dispenser/vending utility, part-time weekend/holiday stockpersons, drivers, semidriver, semidriver doubles, bulk pre-sales delivery employees, pre-sales delivery employees, utility drivers, fountain vending delivery drivers, merchandisers, special event crews, display/stockers, plant and service employees, fleet painters, shipping and receiving clerks, machine operators, advertising material attendants, painters, bottlers, syrup employees, carpenters, janitors, lift truck operators, warehouse crew, plant crew, stockroom attendants, garage attendants, garage utility employees, seasonal help, full and part-time delivery drivers, seasonal help full and part-time delivery drivers, and lead persons employed by the Employer at its facilities located at 3220 East 26th Street, Vernon, California; 1950 Williams Street, Oxnard, California; 7225 Orangethorpe Avenue, Buena Park, California; 1300 West Taft, Orange, California; and 1166 Arroyo Avenue, San Fernando, California; excluding all other employees, technical employees, quality control technicians, temporary employees, office clerical employees, professional employees, salespersons except covered route salespersons, guards and supervisors as defined in the Act.

uary 17, 1997. In spite of this lack of proper service Region 21 refused to give the UIW an adequate period to campaign.

On February 21, 1997, the Regional Director notified the Intervenor, the Petitioner, and the Employer by certified letter that, under Section 102.69(a) of the Board's Rules and Regulations, the party filing the objections shall furnish to the Regional Director the evidence available to it in support of its objections. Accordingly, the Intervenor was given until the close of business on February 27, 1997, to supply such evidence, or its objections would be subject to being overruled without further investigation. No evidence in support of this objection was submitted. The Board has long held that parties filing objections must present specific and timely evidence in support of their objections. *Operator Services West*, 300 NLRB 473 (1990); *Public Storage*, 295 NLRB 1034 (1989); *Star Video Entertainment L. P.*, 290 NLRB 1010 (1988); *Sambo's North Division Store*, 223 NLRB 565 (1976); *Lindsley Industries*, 199 NLRB 647 (1972); *PSI Division of Warner Electric Brake & Clutch*, 194 NLRB 499 (1971); *Mrs. Weaver's Salads*, 181 NLRB 197 (1970); and National Labor Relations Board Casehandling Manual (Part Two) Representation Proceedings, Sections 11392.5 and 11396. Accordingly, it is recommended that the Intervenor's Objection 1 be overruled.

Objection 2

It is the understanding of UIW officials that AIWU campaigned on a platform that if it were elected that in one year they would transfer the bargaining unit to the International Brotherhood of Teamsters.

In support of this objection, the Intervenor presented an employee witness, who states that in or about the first week of February 1997, during the course of the organizing drive, an unidentified AIWU (Petitioner) agent, along with another propetitioner individual were distributing propaganda on the street, outside of the Employer's facility. The witness further states that as he was leaving the facility at the end of his shift, he addressed the two men distributing leaflets and asked what could the AIWU do for him and what made the AIWU better than the Intervenor. The witness states that one of the two men told him that "if the AIWU was no better after 1 (one) year, that they could bring the Teamsters in." No other evidence was presented in support of this objection.

The Petitioner, in its position statement, denies engaging in any objectionable conduct at any time relevant here. The Petitioner asserts that statements concerning its anticipated representation of bargaining unit employees is not a basis to set aside an election. The Petitioner further argues that elections are not set aside because of misleading campaign statements or misrepresentations of fact.

Although the alleged remark attributed to a petitioner agent may inaccurately describe the rights of employees during the process of representation by a labor organization, the remark itself does not warrant setting aside the election. In addition, I have reviewed the Petitioner's flyer [Exh. A omitted from publication], and I note that the evidence presented does not establish that the Petitioner made promises with regard to transferring the unit into a Teamsters Union, if the employees were not satisfied with the Petitioner's representa-

tion after 1 year. The flyer states "that the AIWU guarantees that if the employees are not satisfied with their representation, they have the right, after 1 year to vote another union in by majority vote." The remark at worse may be an inaccurate representation of options available to employees. The Board no longer sets elections aside based on material misrepresentations or misleading campaign statements. *Midland National Life Insurance Co.*, 263 NLRB 127 (1982). Accordingly, I recommend that the Intervenor's Objection 2 be overruled.

Objection 3

Seven-Up Officials have conducted themselves in a way that influenced its employees to vote against the UIW. The Employer has blocked every attempt by the UIW to represent the employees according to the Collective Bargaining Agreement. The Employer's ongoing action has stalled the representation process avoiding grievances and arbitrations and lack of willingness to cooperate with the Union on various other issues in the best interest of the UIW, Employer and employees.

In support of its contention, the Intervenor has submitted a copy of a petitioner campaign propaganda, where according to the Intervenor, the Petitioner misrepresents the Intervenor's performance. With regard to these flyers, I have reviewed them and I note that nothing therein constitutes

promises of increased wages or benefits or threats. Moreover, the Board has held that it will not probe into the truth or falsity of the parties' campaign statements, and will not set elections aside on the basis of misleading campaign statements. *Midland National Life Insurance Co.*, supra.

Conclusion

I, having recommended that the Intervenor's objections be overruled in their entirety,² and the results of the election showing that a majority of the valid votes counted have been cast for the Petitioner, further recommend that a Certification of Representative be issued.

²Under the provisions of Sec. 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D.C. 20570. Exceptions must be filed with the Board in Washington by April 3, 1997.

Under the provisions of Sec. 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and which are not included in the report, are not part of the record before the Board unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the report shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.